

REMARKS

The Office Action mailed January 26, 2009 has been carefully reviewed and the following remarks have been made in consequence thereof.

Claims 1-31 are pending in this application. Claims 23-31 are allowed. Claims 1-22 stand rejected.

The rejection of Claims 1-22 under 35 U.S.C. § 101 is respectfully traversed. It is asserted on page 3 of the Office Action that “[b]ased on Supreme Court precedent and recent Federal Circuit decisions, a § 101 process must be tied to another statutory class (such as an apparatus) and must positively recite the subject matter that is being transformed by identifying the material that is being changed to a different state.” (Emphasis added). Applicants respectfully traverse this assertion.

The Supreme Court has consistently held that a process claim reciting an algorithm must either be tied to a machine or transformative of some composition of matter or device. See Parker v. Flook, 437 U.S. 584, 588 n.9 (1978) (emphasis added); see also Diamond v. Diehr, 450 U.S. 175, 184 (1981). As such, Applicants respectfully submit that a process claim need not be tied to a machine and transformative of some composition of matter or device. Rather, as the Federal Circuit has also recognized, “[a] claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.” In re Bilski, 545 F.3d 943, 954 (Fed. Cir. 2008) (emphasis in original).

Claim 1 is a method that is tied to a Multi-Energy Computed Tomography (MECT) system that includes an x-ray source, which is a particular machine or apparatus. As such, Applicants respectfully submit that Claim 1 is a claimed process that is tied to a particular machine or apparatus. Accordingly, Applicants respectfully submit that Claim 1 satisfies Section 101 as recognized by both the Supreme Court and the Federal Circuit.

Claims 2-22 depend from independent Claim 1. When the recitations of Claims 2-22 are considered in combination with the recitations of Claim 1, Applicants respectfully submit that dependent Claims 2-22 likewise satisfy Section 101 as recognized by both the Supreme Court and the Federal Circuit.

For at least the reasons set forth above, Applicants respectfully request that the Section 101 rejection of Claims 1-22 be withdrawn.

The rejection of Claims 1-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-21 of commonly owned U.S. Patent No. 6,999,549 (Sabol) is respectfully traversed. Submitted herewith is a Terminal Disclaimer limiting the term of the pending application to that of Sabol. As such, Applicants respectfully request that the obviousness-type double patenting rejection of Claims 1-31 be withdrawn.

The rejection of Claims 1-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-29 of commonly owned U.S. Patent No. 6,898,263 (Avinash) is respectfully traversed. Submitted herewith is a Terminal Disclaimer limiting the term of the pending application to that of Avinash. As such, Applicants respectfully request that the obviousness-type double patenting rejection of Claims 1-31 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,



William J. Zychlewicz
Registration No. 51,366
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070